

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*;
AND
IN THE MATTER OF A RESIGNATION APPLICATION
BY MALCOLM LENNIE, QC
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Resignation Committee:

Darlene Scott, QC - Chair (Bencher)
Margaret Unsworth, QC - Committee Member (Bencher)
Glen Buick - Committee Member (Bencher)

Appearances:

Counsel for the Law Society – Katrina Haymond
Malcolm Lennie, QC - Self-Represented

Hearing Date:

April 10, 2017

Hearing Location:

Law Society of Alberta at 800, Bell Tower, 10104-103 Avenue, Edmonton, AB T5H 0H8

RESIGNATION COMMITTEE REPORT

Jurisdiction, Preliminary Matters and Exhibits

1. Malcolm Lennie applied for resignation from the Law Society of Alberta (“LSA”) pursuant to section 32 of the *Legal Profession Act*, R.S.A. 2000, c.L-8 (“LPA”). Because Mr. Malcolm’s conduct is the subject of citations issued pursuant to the LPA, this Resignation Committee (“Committee”) was constituted to hear this application. At the time of this hearing, Mr. Lennie was an active member of the LSA.

2. Exhibits 1 through 4, consisting of the Letter of Appointment of the Committee, the Notice to Attend to the Member, the Certificate of Exercise of Discretion and the Certificate of Status of the Member with the LSA, established the jurisdiction of the Committee.
3. The Certificate of Exercise of Discretion pursuant to Rule 96(2)(b) of the *Rules of the Law Society of Alberta* ("Rules") determined that there were no persons to be served with a private hearing application. Counsel for the LSA advised that the LSA did not receive a request for a private hearing and the parties did not request a private hearing. Accordingly, the Chair directed that the hearing be held in public.
4. At the outset of the hearing, Exhibits 5 and 7, contained in the Exhibit Book which had been provided to the Committee in advance, were entered into evidence with the consent of the parties. Exhibit 6, being the Agreed Statement of Facts, an unsigned copy of which was provided to the Committee in advance, was signed, delivered to the Committee, and entered as Exhibit 6.
5. The Chair introduced the members of the Committee and inquired as to whether any party had any objection to the constitution of the Committee, on the grounds of bias or otherwise. As there were no objections, the hearing proceeded.
6. Mr. Lennie was unrepresented and the chair verified with Mr. Lennie that he was choosing to proceed without counsel.

Citations

7. Mr. Lennie faced 10 citations arising from two separate matters, as detailed in the Agreed Statement of Facts attached to this decision.

Agreed Statement of Facts

8. Mr. Lennie has admitted to a number of citations, as detailed in paragraphs 126 -144 of the attached Agreed Statement of Facts and Admissions, including acting in a conflict of interest, preferring the interest of one client over another (and benefitting from that preference), releasing funds from trust without authorization to do so, and failing to protect his clients.

Evidence

9. There was no additional evidence called by either party.

The Submissions of the Parties

10. Mr. Lennie and the LSA both submitted that this Committee should accept Mr. Lennie's resignation pursuant to section 32 of the LPA on the grounds that doing so was in the best interest of the public. Counsel for the LSA submitted that accepting his resignation would accomplish the objective of removing Mr. Lennie from practice, without the cost, delay and uncertainty of result that would be inherent in an attempt to proceed to a resignation under section 61 or to a hearing, which would be complex, lengthy and involve at least 11 witnesses. LSA counsel also noted that the events giving rise to these citations had occurred approximately 10 years ago.

Decision Regarding Resignation

11. The Committee agreed with the submissions of the LSA that it is in the best interests of the public and the profession for Mr. Lennie to resign forthwith. The actions to which he has admitted are matters of integrity; acting in a conflict, preferring the interests of himself and others over the interests of his clients and releasing trust funds without authority or direction. These are serious matters and the public is entitled to protection from members who behave in this fashion.
12. The Committee considered the distinctions between a resignation pursuant to section 32 and section 61, including that a resignation under section 61 constitutes a deemed disbarment. The Committee noted that section 106(3) of the LPA prevents a disbarred person from acting as an agent for others, but also noted that Mr. Lennie has included an undertaking not to act as an agent for others in paragraph 5 of his Undertakings and Agreements. (Exhibit 6 Tab C)
13. Although the matters to which Mr. Lennie has admitted are serious and involve the improper handling of trust funds, and therefore might result in a sanction of disbarment if taken to a hearing, the Committee deferred to the recommendations of LSA counsel and accepted the recommendation of the LSA to permit Mr. Lennie to resign pursuant to section 32 of the *Legal Profession Act*.
14. Both Mr. Lennie and the LSA submitted that an effective date for the resignation of May 31, 2017, would permit Mr. Lennie to wind up his practice in an orderly fashion and ensure his clients' matters were all attended to or transferred to another lawyer such that his clients would not be inconvenienced or negatively impacted by his resignation.

Undertakings

15. At the Committee's request, Mr. Lennie agreed to amend his Undertakings and Agreement, contained at Exhibit 6, Tab C (the "Undertakings"), as follows:

- a. By adding the following:
 - 3. *As of the effective date of my resignation, my trust accounting records will be complete and up to date and all trust funds for which I am responsible will have been accounted for and paid over or delivered to the persons entitled thereto, or properly transferred to [RB].*
 - 4. *My trust accounts will be closed by the effective date of my resignation and I will submit, within one month of the date the trust accounts are closed, a final Law Firm Self-Report and a final Trust Safety Accounting Upload from the date of my last fiscal year-end to the date the accounts are closed.*
- b. By adding the words “prior to the effective date of my resignation.” to the end of paragraph 3 of the Undertakings; and
- c. By requiring that a detailed list of files being transferred to other lawyers to be delivered to the LSA prior to his resignation, together with the written acknowledgment of the lawyer who is receiving those files.

Matters Arising

- 16. The Committee found that the Agreed Statement of Facts was in a form satisfactory to the Committee.
- 17. The Committee accepted the joint submissions of the parties to accept Mr. Lennie’s resignation effective May 31, 2017, pursuant to section 32 of the LPA, but subject to and conditional on compliance with his Undertakings, as amended.
- 18. In the event that Mr. Lennie ever seeks re-admission to the LSA, the actual costs of the investigation and hearing in this matter will be payable by him as a condition for consideration of his application for readmission.
- 19. There shall be no Notice to the Attorney General.
- 20. There will be a Notice to the Profession issued and Mr. Lennie’s resignation shall be entered into the roll.

- 21.** The exhibits and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to third parties will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at the City of Edmonton, in the Province of Alberta, this 25th day of May, 2017.

Darlene W. Scott QC, Chair

Margaret Unsworth QC

Glen Buick

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

- AND -

IN THE MATTER OF A RESIGNATION APPLICATION BY

MALCOLM D. LENNIE,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

AGREED STATEMENT OF FACTS AND ADMISSIONS

BACKGROUND

1. I was admitted as a member of the Law Society of Alberta (the "LSA") on June 21, 1971.
2. I have practiced in Edmonton, Alberta, since I was admitted as a member of the LSA.
3. Between June 21, 1971 and April 1, 1988, I practiced at Lennie & Martin.
4. Between April 1, 1988 and June 1, 1990, I practiced at Ackroyd, Piasta, Roth & Day.
5. Between June 1, 1990 and January 31, 1999, I practiced at Lennie & Company.
6. I was suspended for one year beginning on January 31, 1999, for conduct deserving of sanction. I did not return to Active/Practising status until November 4, 2002 after I paid the costs of the conduct hearing in full.
7. I was subject to restrictions on my practice from November 4, 2002 to June 24, 2005 in that I undertook to cooperate with Practice Review.
8. I have practiced as a sole practitioner since November 4, 2002. Since 2002, my primary area of practice has been real estate conveyancing.

CITATIONS

9. The citations that form the basis of this hearing arise out two complaints against me. For ease of reference, the citations are repeated here and grouped by complainant:

Complaint File: CO20102043 (Complainant: E.P.)

1. It is alleged that that I acted while in a conflict of interest on the [•] Project and such conduct is deserving of sanction.
2. It is alleged that I acted while in a conflict of interest, preferred the interests of one client over another and

benefitted from this preference and such conduct is deserving of sanction.

3. It is alleged that that I violated various Accounting Rules of the Law Society and such conduct is deserving of sanction.
4. It is alleged that I failed to comply with several directions of the Court which as a member of the legal profession brings the administration of justice into disrepute and such conduct is deserving of sanction.
5. It is alleged that I failed to promptly and completely respond to the Law Society investigators and such conduct is deserving of sanction.

Complaint File: CO20141614 (Complainant: S.F.)

1. It is alleged that I failed to conscientiously serve the interests of my client and such conduct is deserving of sanction.
2. It is alleged that I acted while in a conflict of interest and preferred my own interests over those of my clients and such conduct is deserving of sanction.
3. It is alleged that I failed to act as a careful and prudent solicitor to keep my client informed about the progress of her matter and such conduct is deserving of sanction.
4. It is alleged that I released funds from my trust account that were received for a designated purpose when the purpose had not been satisfied and such conduct is deserving of sanction.
5. It is alleged that I failed to provide accounting information requested by my client contrary to Rule 125(6)(b) and such conduct is deserving of sanction.

Statement of facts

FIC

10. In 2006, I began to act on behalf of [FIC Ltd.] as well as other related companies, all of which formed the [FIC].
11. FIC was a group of companies based out of Vancouver, British Columbia whose mandate was to recruit individuals to pay a fee to become a member. These members

were then allowed to pay additional fees to invest in various real estate projects throughout Canada and the United States that were endorsed by FIC.

12. [EP] was a Director of FIC at all relevant times.
13. I primarily received instructions on behalf of FIC from [JT]. [JT] was an agent contracted by FIC to locate properties for development in Alberta and to negotiate the purchase of the properties on FIC's behalf.

[KH]

14. [KH] was an acquaintance of mine who owned a parcel of land in the County of [●].
15. Sometime in 2007, [KH] conceived of an idea to subdivide and sell his land. [KH] was advised by the County of [●] that a project of this nature was more viable with more parcels of land.
16. [KH] retained me to assist him in assembling more parcels of land and to facilitate the sale of the land to a developer.
17. I introduced [KH] to [JT] on or about April 10, 2007. [JT], on behalf of FIC, expressed an interest in purchasing all of the parcels of land once assembled by [KH].

1316576 Alberta Ltd.

18. On April 20, 2007, I incorporated 131[****] Alberta Ltd. ("131").
19. At the time of incorporation, [KH] and I were both Directors and equal shareholders of 131. There were no other Directors or shareholders.
20. 131 was specifically incorporated as a result of discussions involving [KH], [JT] and I where it was determined that negotiating with one landowner who owned all of the parcels of land would streamline the process and the sale of the land to FIC.
21. It was planned that 131 would buy the two pieces of land adjacent to [KH]'s and that all of the land would then be sold to FIC by 131 after it was developed.

Purchase of Land

22. On April 20, 2007, 131 entered into an agreement with [KH] to purchase [KH]'s land in the County of [●] for \$1,100,000.00. The purchase was to close on June 15, 2007.
23. I acted on behalf of both 131 and [KH] for the purchase and sale of [KH]'s land.
24. As of April 20, 2007, I and [KH] both remained Directors and equal shareholders of 131.

25. On May 4, 2007, [KH] was removed from 131's corporate registry. I was left as the sole Director and shareholder.
26. On May 15, 2007, 131 entered into an agreement with [RC and BC] to purchase [RC and BC's] land in the County of [●] for \$2,300,000.00. The [RC and BC] land was adjacent to [KH]'s. The purchase was to close on August 15, 2007.
27. On May 15, 2007, 131 entered into an agreement with [BM and SM] to purchase the [BM and SM] land in the County of [●] for \$825,000.00. As part of the purchase price, 131 also agreed to provide [BM and SM] with a lot in the completed development. The [BM and SM] land was adjacent to [KH]'s. The purchase was to close on August 15, 2007.
28. I acted on behalf of 131 for the purchase of the [RC and BC] land and the [BM and SM] land. [RC and BC] and [BM and SM] were both represented by their own legal counsel.
29. I prepared the purchase agreements for the three parcels of land.
30. At the time of the execution of the purchase agreements, I was the sole Director and shareholder of 131.

The [●] Project and the Agreement to Purchase

31. On May 16, 2007, 131 and FIC entered into an agreement whereby FIC would purchase the consolidated parcels of land from 131 for \$5,250,000.00, plus GST, after the land was subdivided and serviced (the "Agreement").
32. The plan to purchase, subdivide and service the three parcels of land in the County of [●] became known as the "[●] Project".
33. I drafted the final version of the Agreement.
34. The Agreement was signed by [KH] on behalf of 131, although he was not a Director or shareholder of 131 at the time. At the time of the signing, I was the sole Director and shareholder of 131.
35. [JT] signed the Agreement on behalf of FIC.
36. I acted as the solicitor for FIC, as the purchaser of the completed subdivision, as well as 131, as the vendor of the completed subdivision.
37. I did not advise FIC of the conflict of interest at the time the Agreement was entered into. No written conflict letter was executed at the time of the initial representation.
38. FIC was never advised of the full extent of my ownership interest in 131. Although I advised FIC I had a "beneficial interest" in the lands, I did not advise FIC that I was the sole shareholder of 131.
39. The closing date for the Agreement was January 15, 2008.

40. Pursuant to the Agreement, scheduled payments were to be made by FIC to 131.
41. 131 had no independent capital and the [●] Project was dependent on funds received from FIC. It was understood that the payments from FIC would be used by 131 to fund the purchase of the three parcels of land making up the [●] Project.
42. Pursuant to the Agreement, 131 was obliged to complete the subdivision of the three parcels of land and to provide FIC with fifteen subdivided lots prior to the closing date. In addition, 131 was obliged to provide services, including gas, power, and water, to all the subdivided properties to minimum requirements as required to complete the subdivision.
43. In essence, 131 was flipping the land purchased from [KH], [RC and BC], and [BM and SM] to FIC but adding value by completing and developing the subdivision.
44. The Agreement contained no progression or completion deadlines for any of 131's obligations.
45. The Agreement referenced a "Servicing Addendum", however no such document was appended to the Agreement.
46. In addition, the Agreement had few safeguards to protect FIC's interests, including no penalties for a default by 131, no requirements on how funds were to be allocated by 131 at various stages, and no reporting deadlines for 131.

Release of Funds received from FIC

47. I released funds received from FIC to 131 and other third parties, prior to the closing date of the Agreement.
48. I released funds received from FIC to 131 and other third parties without taking proper precautions to protect FIC's interests.
49. Funds were released by me without any trust conditions or any restrictions on the use of the funds. In particular:
 - a. I disbursed \$85,000.00 to pay 131's deposits to the land owners on May 15, 2007;
 - b. I transferred \$1,000,000.00 to trust ledgers for 131's purchases from [RC and BC] and [BM and SM] on September 10, 2007;
 - c. I transferred \$530,000.00 to the trust ledger for 131's purchase from [KH] on October 15, 2007;
 - d. I sent \$200,000.00 to [RC and BC's] lawyer on January 24, 2008;
 - e. I sent \$200,000.00 to [BM and SM's] lawyer on January 25, 2008;

- f. I transferred \$550,000.00 to the trust ledger for 131's purchase from [KH] on February 5, 2008;
 - g. I transferred \$1,000,040.00 to the trust ledger for 131's purchase from [RC and BC] on February 29, 2008;
 - h. I transferred \$230,000.00 to the trust ledger for 131's purchase from [BM and SM] on April 3, 2008; and
 - a. I released \$225,000.00 to Servus Credit Union on May 6, 2008.
50. I did not have the authority to release the funds to 131 and other third parties without conditions or prior to the satisfaction of 131's obligations under the Agreement.
51. In addition, I did not register any caveat on title to the land owned by [KH], [RC and BC] or [BM and SM] so as to protect 131's and FIC's interests.
52. Furthermore, the \$225,000.00 transferred to Servus Credit Union on May 6, 2008 was transferred to the benefit of [KH], despite the fact [KH] had been paid in full for the purchase of the land and 131 had no contractual obligation left owing to [KH].
53. I also used funds, which were received from FIC and then transferred to 131, to pay myself fees arising from my role as a Director and shareholder of 131 prior to the satisfaction of 131's obligations under the Agreement.
54. Of funds received from FIC pursuant to the Agreement, \$239,683.00 was released to me for my role as a Director and shareholder of 131, even though 131 had not obtained approval for the subdivision and even though 131 had not begun the construction necessary to service the subdivision as required pursuant to the Agreement.
55. Although 131 had no other source of operating capital, instead of using the funds to fulfill 131's obligations, the funds were used for my own benefit.

Failure to Fulfill Agreement Obligations

56. By November 2007, [KH] and I were aware that completion of the subdivision and servicing by 131 would cost much more than anticipated.
57. After November 2007, 131 took no steps to satisfy any of its planning, development, and subdivision obligations.
58. Nonetheless, FIC continued to make payments to 131 under the Agreement and I continued to request funds from FIC and to transfer the funds from FIC to other parties.
59. I took no steps to protect FIC or to stop the flow of payments from FIC under the Agreement even though I knew that 131 had taken no steps to fulfill its obligations and even though I knew that 131 could not fulfill its obligations under the Agreement as a result of the increased cost.

60. I continued to collect money from FIC and to disburse it to other parties on behalf of 131 until at least May 2008, even though [KH], [BM and SM], and [RC and BC] had been paid in full by April 2008.

Failure of [•] Project

61. 131 never provided FIC with the serviced and subdivided lots as required.
62. FIC ran into significant cash flow problems and defaulted on its continuing obligations to provide the scheduled payments. 131 then defaulted on its obligations to provide subdivided and serviced lots.
63. Through me, FIC remitted \$4,771,135.00 to 131 for the [•] Project. However, FIC received no land in consideration for its money.
64. In the end, the [•] Project resulted in the following:
- a. [KH] received the full purchase price for his land (\$1,100,000.00) by February 2008 but I never transferred the title to either 131 or FIC. [KH] subsequently re-sold the land for \$1,000,000.00.
 - b. [RC and BC] received the full purchase price for their land (\$2,300,000.00). Title to the land was transferred to 131 on October 10, 2007. The title was never transferred to FIC. 131 subsequently sold the land for \$1,615,000.00 in 2013.
 - c. [BM and SM] received the full monetary purchase price for their land (\$825,000.00) on April 3, 2008 but never received the lot in the subdivision as required. Although title was transferred to 131, [BM and SM] enforced a vendor take back mortgage and regained ownership of the land on April 29, 2011.

Litigation arising from the [•] Project

65. FIC filed a Statement of Claim against me, [KH], and 131 on February 26, 2010.
66. The trial of the action was scheduled to begin on May 11, 2015. It settled on the eve of trial and a Consent Order was filed on May 12, 2015.
67. I entered into a Covenant Not to Sue and Indemnity Agreement on May 8, 2015 and agreed to pay FIC \$1,056,928.76.

S.F.

68. In September 2007, [SF] became involved with FIC and [JT].
69. [JT] offered to sell S.F. two lots of bare land in a FIC development in [•], Alberta (the “[•] Lots”) at a reduced price of \$100,000.00, plus GST, per lot. [JT] informed S.F. that FIC

would promote the development and that FIC would be able to resell the lots for her at a profit.

70. [JT] instructed S.F. to send her money to me. He advised S.F. that I was a friend of his who he had done business with previously and indicated that I would “take care of her”.
71. No written agreement relating to the purchase of the [●] Lots by S.F. from FIC was ever created.
72. On September 20, 2007, S.F. sent \$200,000.00 to me “in trust” for the purchase of the [●] Lots.
73. I opened a new file and assigned a file number, [●], to S.F. upon receipt of the funds.
74. On October 1, 2007, S.F. sent me an additional \$10,000.00, representing the GST and balance of the purchase price for the [●] Lots.
75. I deposited all the funds received from S.F. into the trust ledger for file [●].
76. After receipt of the funds, I and S.F. exchanged emails regarding the purchase of the [●] Lots. S.F. instructed me to register the [●] Lots in her name and in the name of her son, [QF], as joint tenants.
77. I did not advise S.F. that FIC was a long-time, and current, client of mine. I did not advise S.F. that I was also acting on behalf of FIC with respect to the subdivision and sale of the [●] Lots.
78. Furthermore, I did not advise S.F. that I had an ongoing business relationship with FIC and that I was involved in the [●] Project transaction with FIC where I was a Director and shareholder of 131, who was party to a contract with FIC.
79. S.F. was never advised there was a potential conflict of interest and she was never advised that she may wish to seek independent legal advice.

Transfer of S.F.’s Funds

80. S.F. believed that the transaction for the purchase of the [●] Lots had been completed after she delivered the funds to me, subject to final lot allocation in the [●] development.
81. On September 21, 2007, I transferred the \$200,000.00 received from S.F. to file [●], a file not involving S.F.
82. On October 16, 2007, I transferred \$8,000.00 of the additional \$10,000.00 received from S.F. to file [●], which was a different FIC file not involving S.F.
83. On October 29, 2007, I transferred the remaining \$2,000.00 of the additional \$10,000.00 received from S.F. to file [●], which was a different FIC file not involving S.F.

84. S.F. was not told that her funds would be used for this purpose and she was not consulted prior to their release.
85. I did not complete any transfers or registrations in S.F.'s name with respect to the [●] Lots and did not register any caveats, or impose any trust conditions, or take any other steps to protect S.F.'s interest prior to the release of the funds I received on her behalf.
86. I did not advise S.F. that the [●] Lots were not transferred to her name and I did not advise her that I did not take any steps to protect her interests.
87. S.F. continued to believe her interests in the [●] Lots were secure.

Trust Declaration

88. Sometime in November 2007, I prepared a draft Trust Declaration document that acknowledged FIC's receipt of S.F.'s \$210,000.00.
89. The Trust Declaration indicated that two lots in the [●] development, which were to be designated at a later date, were held "in trust" for S.F. and that title would be delivered to her within 120 days.
90. The Trust Declaration was signed by [JT] on behalf of FIC but the details were never completed.
91. S.F. was never informed that the Trust Declaration was created and she never received a copy of the Trust Declaration.
92. S.F. did not receive titles to the lots within 120 days as contemplated in the Trust Declaration.

Transfer to RCR

93. On November 19, 2007, [JT] signed land transfers, which I prepared, on behalf of FIC to [RCR Ltd.] ("RCR") for lots 5 and 6 in the [●] development.
94. Each lot was transferred to RCR by FIC in consideration of one dollar and "the terms of a trust agreement".
95. Lots 5 and 6 were registered in the name of RCR on November 30, 2007.
96. The lots transferred to RCR were the two lots which S.F. believed she was the owner of as a result of her transfer of funds to me. However, lots 5 and 6 had never been transferred to S.F.
97. S.F. was not advised that lots 5 and 6 were transferred to RCR.

[●] Lots

98. S.F. subsequently entered into contracts with RCR in March, 2008 to construct show homes on the two lots registered in the name of RCR.
99. When S.F. did so, she believed she was the owner of lots 5 and 6 and that her interest in the two lots was protected. S.F. believed she could sell the completed homes for a profit upon completion.
100. On or around March 18, 2008, I was engaged by S.F. to act on her behalf in order to obtain a construction draw mortgage from ATB financial to facilitate the building of the show home on lot 6 of the [●] Lots.
101. At this time, S.F. learned that the [●] Lots had never been registered in her name or her son's name.
102. ATB refused to advance funds to S.F. if her name was not on title.
103. I assisted S.F. with having lot 6 registered to her name and lot 6 was eventually transferred from RCR to S.F. and registered in S.F.'s name on June 26, 2008 as part of the ATB mortgage and in order to allow ATB to advance funds to facilitate the construction of the show home.
104. Lot 6 and the home constructed on it were eventually sold by S.F. at a financial loss.
105. I was also engaged by S.F. on or around March 18, 2008 to act on her behalf in order to obtain a separate mortgage for the other lot, lot 5, through TD Bank.
106. However, lot 5 remained in RCR's name and RCR refused to transfer title to the lot prior to the completion of the construction of the home and the receipt of payment in full from S.F.
107. I obtained the mortgage funds from TD Bank on behalf of S.F. and attempted to negotiate with RCR with respect to the payment for the home. The negotiations did not result in a transfer of the lot to S.F.
108. I eventually registered a caveat on lot 5 on December 19, 2008 to protect S.F.'s interest in the property.
109. My negotiations with RCR ultimately failed when the market for the [●] development collapsed. Subsequently, lot 5 was foreclosed on, as RCR had obtained a private mortgage using lot 5 as security. The lot and home were then sold in a judicial sale.
110. S.F. did not receive anything from the sale of lot 5.

Complaints and Responses

111. On August 4, 2010, the LSA received a letter of complaint about me from E.P. (the "E.P. Complaint").
112. On December 6, 2010 and December 17, 2010, I responded to the E.P. Complaint.

113. On June 24, 2015, I provided another response to the E.P. complaint.
114. On April 2, 2014, the LSA investigation team contacted S.F. as it was determined her money was involved in the [•] Project and transferred by me.
115. On June 22, 2014, the LSA received a written letter of complaint about me from S.F. (the "S.F. Complaint").
116. I responded to the S.F. Complaint on July 23, 2014.

LSA Investigation and Subsequent Events

117. On March 18, 2011, [GB], the Director of Lawyer Conduct with the LSA, issued an investigation order into my conduct with respect to the E.P. Complaint.
118. The Order was amended on January 13, 2014 and August 11, 2014 by [EO], Deputy Executive Director and Director, Regulation, to change or add investigators.
119. The investigation into the E.P. Complaint was conducted from March 2011 until December 2014.
120. A Final Investigation Report was issued on February 25, 2015 in the E.P. Complaint.
121. On October 21, 2014, [DT], the Executive Director of the LSA, issued an investigation order into my conduct with respect to the S.F. Complaint.
122. The investigation into the S.F. Complaint was conducted from October 21, 2014 to June 9, 2015.
123. The Final Investigation Report was issued on August 21, 2015 in the S.F. Complaint.
124. On March 2, 2016, a panel of the Conduct Committee referred my conduct to a Hearing Committee, resulting in the aforementioned citations.
125. The panel of the Conduct Committee also directed that the matter be referred to the Practice Review Committee pursuant to section 58 of the *Act*, to carry out a general review and assessment of my conduct and practice.

Admissions

Complaint File: CO20102043 (Complainant: E.P.)

Citation 1: Acting in a Conflict of Interest

126. I admit that I acted in a conflict of interest on the [•] Project.

127. I admit that I represented both FIC and 131 without disclosing the specifics of my ownership interest in 131 to FIC.

Citation 2: Acting in a Conflict of Interest and Benefitting from Preference of Interest

128. I admit that I acted in a conflict of interest, preferred the interests of one client over another and benefitted from this preference.
129. I admit that while representing both FIC and 131, I drafted the Agreement between FIC and 131 in a manner that preferred the interests of 131. I admit the Agreement preferred the interests of 131 over FIC as it:
- (1) Failed to adequately safeguard FIC's interests;
 - (2) Failed to include a remedy for FIC in the event 131 defaulted on its obligations;
 - (3) Failed to include the Servicing Addendum referenced in the Agreement;
 - (4) Failed to include any timelines for progression or completion dates for 131's obligations; and
 - (5) Failed to specify how FIC's funds were to be allocated at various stages of completion.
130. I admit that I released funds received from FIC to 131, as well as to third parties on behalf of 131, without any trust conditions or any restriction on the use of the funds, prior to the satisfaction of 131's obligations under the Agreement, including:
- (1) \$20,000.00 to [KH] on May 15, 2007;
 - (2) \$15,000.00 to [BM and SM] on May 15, 2007;
 - (3) \$50,000.00 to [RC and BC] on May 15, 2007;
 - (4) \$1,000,000.00 to 131 on September 10, 2007;
 - (5) \$530,000.00 to 131 on October 15, 2007;
 - (6) \$200,000.00 to [RC and BC]'s lawyer on January 24, 2008;
 - (7) \$200,000.00 to [BM and SM]'s lawyer on January 25, 2008;
 - (8) \$550,000.00 to 131 on February 5, 2008;
 - (9) \$1,000,040.00 to 131 on February 29, 2008;
 - (10) \$230,000.00 to 131 on April 3, 2008; and
 - (11) \$225,000.00 to Servus Credit Union on May 5, 2008.

131. I admit that I used funds received by 131 from FIC to pay myself fees arising from my role as a Director and shareholder in 131 prior to the satisfaction of 131's obligations under the Agreement.
132. I admit that I failed to take precautions to protect FIC's interests, as I:
- (1) Failed to transfer the title for [KH]'s land to 131 or FIC after the full payment of the purchase price;
 - (2) Failed to register a caveat on the title of the three properties which FIC was to purchase from 131 in accordance with the Agreement; and
 - (3) Failed to advise FIC in November 2007 that 131 would not be able to fulfill its obligations under the Agreement.

Complaint File: CO20141614 (Complainant: S.F.)

Citation 1: Failure to Serve Clients

133. I admit that I failed to serve my client in a competent, conscientious, and diligent manner.
134. I admit that I failed to take any steps to register the [•] Lots in the name of S.F. and Q.F. prior to June 2008.
135. I admit that I failed to take any steps to register a caveat on the [•] Lots to protect S.F.'s interest prior to December 2008.
136. I admit that I failed to complete the Trust Declaration signed by [JT] in November 2007.
137. I admit that I failed to take any steps to ensure S.F. received titles to the [•] Lots within 120 days as contemplated in the Trust Declaration signed by [JT] in November 2007.

Citation 2: Acting in a Conflict of Interest

138. I admit that I acted in a conflict of interest and preferred my own interests over those of my clients.
139. I admit that I acted for both S.F. and FIC without obtaining S.F.'s consent to the potential conflict.
140. I admit that I acted for both S.F. and FIC without disclosing my pre-existing and ongoing business arrangement with FIC to S.F.

Citation 4: Releasing Funds from Trust Account

141. I admit that I released funds from my trust account that were received for a designated purpose when the purpose had not been satisfied.
142. I admit that on September 21, 2007, I released \$200,000.00, which I received from S.F. on September 20, 2007 for the purpose of purchasing the [●] Lots, without receiving title to the [●] Lots and without taking any substantive steps to protect S.F.'s interest in the [●] Lots.
143. I admit that on October 16, 2007, I released \$8,000.00, which I received from S.F. on October 1, 2007 for the purpose of purchasing the [●] Lots, without receiving title to the [●] Lots and without taking any substantive steps to protect S.F.'s interest in the [●] Lots.
144. I admit that on October 29, 2007, I released \$2,000.00, which I received from S.F. on October 1, 2007 for the purpose of purchasing the [●] Lots, without receiving title to the [●] Lots and without taking any substantive steps to protect S.F.'s interest in the [●] Lots.

Complaint history

145. The LSA has recorded a total of fifty-three complaints against me, two of which are the subject matter of this application for resignation.
146. Of the fifty-three complaints, thirty-one were informal and required no formal discipline response.
147. Of the fifty-three complaints, twenty-two were formal.
148. A recent formal complaint is currently under active investigation. It has not been dismissed or referred to hearing. The complainant alleges that I breached a trust condition. I deny that I breached a trust condition.
149. Six of the previous formal complaints were referred to hearing. I was found guilty of four of the complaints. The other two complaints were discontinued following recommendations made by the Law Society.
150. I was last found guilty of conduct deserving of sanction on April 18, 1997. I received a one year suspension when I was found guilty of conduct deserving of sanction, including failing to serve my clients in a conscientious, diligent and efficient manner, failing to be candid in my responses to the Deputy Secretary of the Law Society, failing to properly account to a client with respect to travel expenses incurred by a client and payments made against those travel expenses, failing to properly account to a client with respect to the rendering of statements of account and payments on the accounts, and failing to promptly return funds to trust as set out in a November 1993 inter-office memo.
151. My suspension began January 31, 1999. I did not return to Active/Practising status until November 4, 2002 after payment of the costs as ordered were received in full.

Summary

- 152. I agree to the publication of this Agreed Statement of Facts and Admissions.
- 153. I agree to make this application to resign as a member of the LSA in public.
- 154. I am bringing this application to resign as a member of the LSA to:
 - a. Avoid inconveniencing witnesses and adjudicators by having to attend a lengthy hearing into the merits of these complaints;
 - b. Avoid a lengthy hearing into the merits of these complaints; and
 - c. Bring these long-standing matters to a conclusion.

Independent legal advice

- 155. I agree that:
 - a. I have received independent legal advice regarding the implications of this application; and
 - b. I have signed this Agreed Statement of Facts and Admissions voluntarily and without any compulsion or duress.

ALL OF THESE FACTS ARE ADMITTED TO THIS 7th DAY OF APRIL 2017.

Witness to the Signature of

Malcolm D. Lennie

“Malcolm D. Lennie”

Malcolm D. Lennie